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September 6, 2013

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BY HAND DELIVERY

Jeff S. Jordan, Esq.
Supervising Attorney
Complaints Examinations & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR ⁶⁷³⁴~~0974~~ (Richard Uihlein)

Dear Mr. Jordan:

This office represents Mr. Richard Uihlein in the above captioned Matter Under Review (MUR). We are responding to the complaint filed on May 8, 2013 by Citizens for Ethics and Responsibility in Washington, Melanie Sloan, the Campaign Legal Center, and Paul S. Ryan ("Complaint").¹

The Complaint alleges that Mr. Uihlein made contributions totaling more than \$46,200 to federal candidates during the 2011-12 election cycle in violation of the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission ("FEC" or "Commission") regulations. Although not specifically alleged, the Complaint also implies that Mr. Uihlein made contributions totaling more than \$70,800 to federal political action committees ("PACs") and federal political party committees during the 2011-12 election cycle. For the reasons outlined below, the Commission should dismiss this matter with respect to Mr. Uihlein.

I. Mr. Uihlein Has Taken Steps to Comply with the Biennial Contribution Limits.

The Complaint alleges that Mr. Uihlein contributed a total of \$59,900 to federal candidates and \$107,100 to federal PACs and party committees during the 2011-12 election cycle. Upon learning of the Complaint, Mr. Uihlein asked counsel to review his contribution history and to take the appropriate steps to ensure

¹ On May 31, the Commission granted our request for an extension of time to respond to the Complaint until July 3, 2013. An additional extension was granted in connection with a tolling agreement. This response was delayed so that Mr. Uihlein could be assured that all requested funds were, in fact, refunded or transferred as appropriate.

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compliance with the biennial contribution limits. Through counsel, Mr. Uihlein has sought and obtained the following refunds or transfers of funds to accounts not subject to the biennial limits.

Specifically, Mr. Uihlein has obtained the following refunds:

CANDIDATE COMMITTEE	AMOUNT
Cantor for Congress	\$2,500
Cotton for Congress	\$2,500
Friends of Kelly Ayotte	\$2,500
Jeff Flake for Senate	\$2,500
Ryan for Congress	\$2,500
Ted Cruz for Senate	\$1,200

In addition, The following Party committees transferred Mr. Uihlein's 2012 contributions to accounts not subject to the biennial limits:

PARTY COMMITTEE	AMOUNT
Illinois Republican Party	\$5,600
Republican National Committee	\$30,800

As the chart below indicates, these refund and transfers brought Mr. Uihlein into compliance with the biennial contribution limits

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	Alleged Total Contributions as of 12/31/12	Reattributions and Refunds Sought	Current Total Contributions	2011-12 Contribution Limit
Total Federal Contributions	\$167,000	(\$50,100)	\$117,000	\$117,000
Candidate Contributions	\$59,900	(\$13,700)	\$46,200	\$46,200
PAC/Party Contributions	\$107,100 ²	(\$36,400)	\$70,800³	\$70,800

An itemized list of Mr. Uihlein's contribution history is attached as Exhibit A. This chart reflects not only the original contributions, but the refunds and transfers identified above. It is important to note that Mr. Uihlein's contributions were within all applicable biennial contribution limits at all times during the 2011 calendar year. Moreover, as detailed above, Mr. Uihlein took affirmative steps to adhere to the law by seeking and obtaining both the refunds and transfers necessary to remedy the situation. Further, the violations at issue are of a highly technical nature and were inadvertent.

Finally, Mr. Uihlein has taken steps to ensure that his 2013-14 election cycle contributions are properly and timely attributed and will stay within the biennial contribution limits.

II. The FEC Should Exercise Its Prosecutorial Discretion and Dismiss the Complaint with Respect to Mr. Uihlein.

The FEC should exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss the Complaint with respect to Mr. Uihlein for two reasons. First, any contributions in excess of the biennial contribution limits were inadvertent and followed by corrective steps to comply with such limits. Second,

² According to our research, the \$59,900 figure is correct. However, it appears that Mr. Uihlein contributed an additional \$100 to a PAC during the election cycle bringing that aggregate total to \$107,200.

³ See Footnote 2 above regarding this discrepancy.



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the Supreme Court will decide this fall whether the biennial contribution limits are unconstitutional.⁴ See *McCutchen, et al. v. Fed. Election Comm'n*, 2012 WL 4466482 (D.D.C. Sept. 28, 2012), *appeal docketed*, No. 12-536 (U.S. Oct. 26, 2012). At a minimum, the Commission should not take any further action with respect to the Complaint until the Supreme Court has issued its opinion in *McCutcheon*. If the Court determines in *McCutcheon* that the biennial contribution limits are unconstitutional, the Commission will have no basis to find a violation in this matter. Furthermore, even if the biennial contribution limits are upheld by the Supreme Court, the circumstances surrounding Mr. Uihlein's contributions warrant his dismissal from this matter.

Sincerely,

A handwritten signature in cursive script that reads "Carol A. Laham".

Carol A. Laham

⁴ In filing this response, Mr. Uihlein does not waive his right to assert a constitutional defense at a later time based on the Supreme Court's forthcoming decision in *McCutcheon*.